

2022 LiveLaw (SC) 775

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
B.R. GAVAI; J., C.T. RAVIKUMAR; J.
SEPTEMBER 12, 2022

CIVIL APPEAL NO. 6543 OF 2022 (Arising out of SLP(C) No. 7781 of 2021)
SUNIL KUMAR VERMA *versus* THE STATE OF BIHAR AND OTHERS

Judicial Service - Appellant had applied to the post of Additional District and Sessions Judge (in Bihar) - In the meantime, he also applied for post of Civil Judge (Junior Division) in State of Uttar Pradesh - After being successful in the selection process (UP), he was appointed on 16th January 2017 as a Civil Judge (Junior Division) in UP - After this, the selection process for recruitment in the Bihar Superior Judicial Services proceeded further. After obtaining the requisite permission from the Allahabad HC, he participated in the selection process conducted by the Patna High Court for the post of Additional District & Sessions Judge. After successfully clearing the selection process, he obtained permission from the Allahabad HC for resigning from the Uttar Pradesh Judicial Services, so as to join his service as Additional District and Sessions Judge in the State of Bihar. Thus he joined the Bihar Superior Judicial Service with effect from 21st August 2018 - Later the Patna HC terminated his service citing the decision in Dheeraj Mor v. High Court of Delhi (2020) 7 SCC 401 - His writ petition challenging this termination dismissed by Patna HC - Allowing appeal, the Supreme Court observed: He was neither in services of the Bihar Subordinate Judicial Services Cadre on the date on which he applied - Nor was he in the services of the Bihar Subordinate Judicial Officer Cadre on the date on which he was selected- He had also sought permission from Allahabad HC in this regard - directed reinstation.

(Arising out of impugned final judgment and order dated 08-04-2021 in CWJC No.8306/2020 passed by the High Court of Judicature at Patna)

For Petitioner(s) Mr. K.V. Viswanathan, Sr. Adv. Mr. Chandra Bhushan Prasad, AOR Mr. Kripa Shankar Prasad, Adv. Ms. Ritu Rajkumari, Adv.

J U D G M E N T

B.R. GAVAI, J.

- 1.** Leave granted.
- 2.** The appeal challenges the judgment passed by the Division Bench of the High Court of Judicature at Patna dated 8th April 2021 whereby the High Court dismissed the writ petition filed by the appellant.
- 3.** By the said writ petition, the appellant had challenged the letter No. 23842/Admn (Selection & Appointment Cell) PF (VIII). XIX-78-2016 dated 18th May 2020 and letter No. 24973/Admn (Selection & Appointment Cell) PF (VIII). XIX78-2016 dated 1st June 2020 issued by the High Court of Judicature at Patna, thereby calling upon the appellant to show cause as to why his services from the post of Additional District and Sessions

Judge should not be terminated in view of the judgment of this Court in the Case of ***Dheeraj Mor v. High Court of Delhi***¹.

4. By way of an amendment to the petition, the appellant has also challenged the letter No.402/Admn.(Apptt.)/XIX-032021 dated 4th January 2021 by which his service in effect was terminated.

5. The facts in brief leading to the present appeal are as under:-

The High Court of Judicature at Patna had invited applications for recruitment to the post of Additional District and Sessions Judge. The appellant, at the relevant time, was an advocate having completed practice of more than 7 years. As such, he was eligible to apply for the said post. Accordingly, he had applied prior to 16th September 2016, which was the last date for submitting the application.

5.1 It appears that on account of certain exigencies, the selection process could not proceed further.

5.2 In the meantime, the State of Uttar Pradesh had invited application for the post of Civil Judge (Junior Division). The appellant had also applied for the said post. After being successful in the selection process, he was appointed on 16th January 2017 as a Civil Judge (Junior Division).

5.3 After the appellant's appointment in the subordinate judicial service in the State of Uttar Pradesh, the selection process for recruitment in the Bihar Superior Judicial Services proceeded further. After obtaining the requisite permission from the High Court of Judicature at Allahabad, the appellant participated in the selection process conducted by the High Court of Judicature at Patna for the post of Additional District & Sessions Judge. The said selection process consisted of a preliminary written examination, main written examination and an oral interview. In the said selection process, the appellant was found to be meritorious and was at Serial No. 50 in the selection list.

5.4 Vide notification dated 7th August 2018, the appellant was offered appointment. The appellant, therefore, obtained permission from the High Court of Judicature at Allahabad for resigning from the Uttar Pradesh Judicial Services, so as to join his service as Additional District and Sessions Judge in the State of Bihar.

5.5 Consequently, the appellant joined the Bihar Superior Judicial Service with effect from 21st August 2018. In the meantime, the judgment of this Court in the case of ***Dheeraj Mor*** (supra) was delivered on 19th February 2020 wherein this Court held that a Judicial Officer, regardless of her or his previous experience as an advocate of 7 years, cannot apply and compete for appointment to the post of Additional District and Sessions Judge in the direct recruitment quota for advocates and pleaders.

5.6 On the basis of the said judgment, the High Court of Judicature at Patna issued a show cause notice as referred hereinabove.

5.7 After considering the reply, the High Court of Patna recommended the cancellation of the appellant's candidature. The Government of Bihar vide notification dated 17th

¹ (2020) 7 SCC 401

December 2020 notified the cancellation of the appellant's candidature. The same was communicated to the appellant by the High Court of Patna vide letter dated 4th January 2021. The appellant challenged the same by filing the writ petition which was dismissed by the impugned judgment.

6. Mr. Chandra Bhushan Prasad, learned counsel appearing for the appellant submits that the law laid down by this Court in the case of *Dheeraj Mor* (supra) would not be applicable to the appellant herein. He submits that what is relevant is the eligibility of a candidate on the date of his application. He relies on the judgment of a three-Judge Bench of this Court in the case of *Deepak Aggrawal v. Keshav Kaushik and Others*². He, therefore, submits that the High Court has erroneously applied the law laid down in the case of *Dheeraj Mor* (supra) to the facts of the present case.

7. Per contra, Shri Gaurav Agrawal, learned counsel appearing for the High Court of Judicature at Patna, vehemently opposes the petition. He submits that the Division Bench of the High Court has rightly applied the law laid down in the case of *Dheeraj Mor* (supra) and dismissed the petition of the appellant.

8. He further submits that it cannot be disputed that when the appellant was appointed as an Additional District and Sessions Judge, he was very much in service in the Uttar Pradesh Subordinate Judicial Services. He, therefore, submits that there is no error in the judgment of the High Court of Judicature at Patna and the present appeal deserves to be dismissed.

9. The present appeal arises out of peculiar facts and circumstances. Undisputedly, the appellant had applied in response to the advertisement issued by the High Court of Judicature at Patna. As on the date of his application, he was a lawyer having practiced for more than 7 years and was, therefore, very much eligible to apply for the direct recruitment category.

10. However, in the meantime, an advertisement was issued by the State of Uttar Pradesh, in response to which he applied and went through the selection process successfully and was appointed as Civil Judge (Junior Division).

11. In the meantime, the selection process conducted by the High Court of Judicature at Patna which had come to a standstill, proceeded further in the year of 2018. The appellant, therefore, after obtaining the requisite permission from the High Court of Judicature at Allahabad participated in the selection process, in which he was found to be meritorious. After being selected, he applied to the High Court of Judicature at Allahabad for grant of permission to resign so as to join in the State of Bihar as an Additional District and Sessions Judge.

12. It could thus be seen that firstly, the appellant was neither in services of the Bihar Subordinate Judicial Services Cadre on the date on which he applied and secondly, nor was he in the services of the Bihar Subordinate Judicial Officer Cadre on the date on which he was selected.

² (2013) 5 SCC 277

13. In that view of the matter, we find that the law laid down in the case of *Dheeraj Mor* (supra) is not applicable in the peculiar facts and circumstances of the present case.

14. It is further to be noted that the appellant was vigilant enough to seek permission of the High Court of Judicature at Allahabad before participating in the selection process. Not only that, after he was found meritorious, he again sought permission of the High Court of Judicature at Allahabad to resign from the said services so as to join the Bihar Superior Judicial Services.

15. We are, therefore, of the view that in the facts and circumstances of the case, the High Court was not justified in dismissing the petition.

16. The appeal is, therefore, allowed. The letter dated 4th January 2021 issued by the High Court and notification dated 17th December 2020 issued by the State of Bihar are quashed and set aside.

17. The appellant is directed to be reinstated forthwith and, in any case, within two weeks from today.

18. Though we hold that the appellant would be entitled to continuity in service for all purposes, including seniority, terminal benefits etc., however, he would not be entitled to the emoluments for the period during which he was out of employment.

19. Pending applications, if any, stand disposed of.

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